PLUNKETT COONEY

Faulty Workmanship, Medical Expense Reimbursement Insurance Coverage Update

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Faulty Workmanship – Eighth Circuit (Missouri Law)

American Family Mut. Ins. Co. v. Mid-American Grain Distributors LLC
958 F.3d 748 (8th Cir. 2020)

The U.S. Court of Appeals for the Eighth Circuit affirmed the trial court's grant of summary judgment in favor of American Family Mutual Insurance Company (American Family), finding that American Family had no duty to defend its insured, Mid-American Grain Distributors LLC (Mid-American) against claims of faulty workmanship because the alleged faulty workmanship was not an occurrence.

American Family issued a commercial general liability policy to Mid-American that provided coverage for, among other things, "property damage" caused by an "occurrence" as those terms are defined in the policy. In February 2015, Mid-American contracted with Lehenbauer Farms Inc. (Lehenbauer) to design and construct a grain storage and distribution facility. Mid-American completed a portion of the work, but then Lehenbauer terminated the contract. Mid-American commenced a lawsuit against Lehenbauer under the parties' contract, and Lehenbauer asserted counterclaims against Mid-American alleging "a multitude of design and construction issues."

Mid-American sought coverage from American Family under the commercial general liability policy. American Family agreed to defend the counterclaims pursuant to a reservation of rights, but later sought a declaration from the trial court that it had no duty to defend Mid-American with respect to the counterclaims. The trial court agreed, granting summary judgment in favor of American Family and holding that the counterclaims did not allege an occurrence.

The appellate court affirmed the trial court's decision, reasoning that the definition of occurrence turns on "whether the insured foresaw or expected the injury or damages" that resulted from the act. The appellate court noted that Missouri law is unsettled on the question of whether the foreseeability inquiry should be examined from an objective or subjective (from the standpoint of the insured) standpoint, but concluded that it need not engage in that inquiry because in some cases, "foreseeability may be 'inferred as a matter of law' given the 'nature or character of the act' and the type of damages at issue… ." Because Lehenbauer alleged damages that were the "normal, expected" consequences of shoddy workmanship and were foreseeable or expected as a matter of law, the alleged shoddy

workmanship could not be an occurrence under American Family's policy. The appellate court also noted that a claim of negligence in the underlying complaint does not make the alleged shoddy workmanship an occurrence if, under the above inquiry, the damages were foreseeable or expected by the insured.

Medical Incident – Fourth Circuit (North Carolina Law)

Affinity Living Group v. StarStone Specialty Ins. Co.
--- F.3d ---, 2020 WL 2630845 (10th Cir. May 26, 2020)

The U.S. Court of Appeals for the Tenth Circuit held that StarStone Specialty Insurance Company (StarStone) owed a defense to Affinity Living Group (Affinity), an assisted living operator, for a lawsuit brought under the False Claims Act. The underlying case alleged that Affinity submitted reimbursement claims to Medicaid for resident services that it never actually provided. StarStone denied coverage on the basis that the claims did not fall within the policy's coverage for "damages resulting from a claim arising out of a medical incident." Following the denial, Affinity filed a declaratory judgment action in federal court seeking a finding, in part, that StarStone owed coverage because the False Claims Act action did arise out a medical incident, namely an "act, error or omission in the insured's rendering or failure to render medical professional services." The district court disagreed and entered judgment on the pleadings in favor of StarStone.

The appellate court reversed. While agreeing with StarStone that billing Medicaid for reimbursement is not in itself a "medical incident," the appellate court reasoned that coverage was available because of North Carolina's broad interpretation of the term "arising out of." The appellate court held that North Carolina law requires only a causal connection between the conduct described in the policy and the injury for which coverage is sought. The appellate court determined that such a connection existed in this case because no claim for damages would have existed but for Affinity's failure to provide the personal-care services for which Affinity sought reimbursement. Accordingly, the appellate court reversed the district's court's grant of StarStone's motion for judgment on the pleadings, and remanded the case for further proceedings.

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